

## § 760.5

## 12 CFR Ch. VII (1–1–16 Edition)

revises the list of States falling within this exemption;

(b) Property securing any loan with an original principal balance of \$5,000 or less and a repayment term of one year or less; or

(c) Any structure that is a part of any residential property but is detached from the primary residential structure of such property and does not serve as a residence. For purposes of this paragraph (c):

(1) “A structure that is a part of a residential property” is a structure used primarily for personal, family, or household purposes, and not used primarily for agricultural, commercial, industrial, or other business purposes;

(2) A structure is “detached” from the primary residential structure if it is not joined by any structural connection to that structure; and

(3) “Serve as a residence” shall be based upon the good faith determination of the credit union that the structure is intended for use or actually used as a residence, which generally includes sleeping, bathroom, or kitchen facilities.

### § 760.5 Escrow requirement.

(a) *In general*—(1) *Applicability*. Except as provided in paragraphs (a)(2) or (c) of this section, a credit union, or a servicer acting on behalf of the credit union, shall require the escrow of all premiums and fees for any flood insurance required under § 760.3(a) for any designated loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after January 1, 2016, payable with the same frequency as payments on the designated loan are required to be made for the duration of the loan.

(2) *Exceptions*. Paragraph (a)(1) of this section does not apply if:

(i) The loan is an extension of credit primarily for business, commercial, or agricultural purposes;

(ii) The loan is in a subordinate position to a senior lien secured by the same residential improved real estate or mobile home for which the borrower has obtained flood insurance coverage that meets the requirements of § 760.3(a);

(iii) Flood insurance coverage for the residential improved real estate or mobile home is provided by a policy that:

(A) Meets the requirements of § 760.3(a);

(B) Is provided by a condominium association, cooperative, homeowners association, or other applicable group; and

(C) The premium for which is paid by the condominium association, cooperative, homeowners association, or other applicable group as a common expense;

(iv) The loan is a home equity line of credit;

(v) The loan is a nonperforming loan, which is a loan that is 90 or more days past due and remains nonperforming until it is permanently modified or until the entire amount past due, including principal, accrued interest, and penalty interest incurred as the result of past due status, is collected or otherwise discharged in full; or

(vi) The loan has a term of not longer than 12 months.

(3) *Duration of exception*. If a credit union, or a servicer acting on behalf of the credit union, determines at any time during the term of a designated loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after January 1, 2016, that an exception under paragraph (a)(2) of this section does not apply, then the credit union or its servicer shall require the escrow of all premiums and fees for any flood insurance required under § 760.3(a) as soon as reasonably practicable and, if applicable, shall provide any disclosure required under section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA).

(4) *Escrow account*. The credit union, or a servicer acting on behalf of the credit union, shall deposit the flood insurance premiums and fees on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of RESPA, which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts, only if the loan is otherwise subject to RESPA. Following receipt of a notice from the Administrator of FEMA or

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other provider of flood insurance that premiums are due, the credit union, or a servicer acting on behalf of the credit union, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

(b) *Notice.* For any loan for which a credit union is required to escrow under paragraph (a) or paragraph (c)(2) of this section or may be required to escrow under paragraph (a)(3) of this section during the term of the loan, the credit union, or a servicer acting on behalf of the credit union, shall mail or deliver a written notice with the notice provided under § 760.9 informing the borrower that the credit union is required to escrow all premiums and fees for required flood insurance, using language that is substantially similar to model clauses on the escrow requirement in appendix A.

(c) *Small lender exception*—(1) *Qualification.* Except as may be required under applicable State law, paragraphs (a), (b) and (d) of this section do not apply to a credit union:

(i) That has total assets of less than \$1 billion as of December 31 of either of the two prior calendar years; and

(ii) On or before July 6, 2012:

(A) Was not required under Federal or State law to deposit taxes, insurance premiums, fees, or any other charges in an escrow account for the entire term of any loan secured by residential improved real estate or a mobile home; and

(B) Did not have a policy of consistently and uniformly requiring the deposit of taxes, insurance premiums, fees, or any other charges in an escrow account for any loans secured by residential improved real estate or a mobile home.

(2) *Change in status.* If a credit union previously qualified for the exception in paragraph (c)(1) of this section, but no longer qualifies for the exception because it had assets of \$1 billion or more for two consecutive calendar year ends, the credit union must escrow premiums and fees for flood insurance pursuant to paragraph (a) of this section for any designated loan made, increased, extended, or renewed on or after July 1 of the first calendar year of changed status.

(d) *Option to escrow*—(1) *In general.* A credit union, or a servicer acting on behalf of the credit union, shall offer and make available to the borrower the option to escrow all premiums and fees for any flood insurance required under § 760.3 for any loan secured by residential improved real estate or a mobile home that is outstanding on January 1, 2016, or July 1 of the first calendar year in which the credit union has had a change in status pursuant to paragraph (c)(2) of this section, unless:

(i) The credit union or the loan qualifies for an exception from the escrow requirement under paragraphs (a)(2) or (c) of this section, respectively;

(ii) The borrower is already escrowing all premiums and fees for flood insurance for the loan; or

(iii) The credit union is required to escrow flood insurance premiums and fees pursuant to paragraph (a) of this section.

(2) *Notice.* For any loan subject to paragraph (d) of this section, the credit union, or a servicer acting on behalf of the credit union, shall mail or deliver to the borrower no later than June 30, 2016, or September 30 of the first calendar year in which the credit union has had a change in status pursuant to paragraph (c)(2) of this section, a notice in writing, or if the borrower agrees, electronically, informing the borrower of the option to escrow all premiums and fees for any required flood insurance and the method(s) by which the borrower may request the escrow, using language similar to the model clause in appendix B to this part.

(3) *Timing.* The credit union or servicer must begin escrowing premiums and fees for flood insurance as soon as reasonably practicable after the credit union or servicer receives the borrower's request to escrow.

[80 FR 43261, July 21, 2015]

### § 760.6 Required use of standard flood hazard determination form.

(a) *Use of form.* A credit union shall use the standard flood hazard determination form developed by the Administrator of FEMA when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special